

DUMMIT, BUCHHOLZ & TRAPP

Attorneys At Law

1661 Garden Highway

Sacramento, California 95833-9706

Telephone (916) 929-9600

Fax (916) 927-5368

Daniela P. Stoutenburg- State Bar No. 183785

Carolyn L. Katzorke - State Bar No. 237989

Attorneys for Defendants LUCILLE SALTER PACKARD

CHILDREN'S HOSPITAL, erroneously sued as LUCILLE PACKARD

CHILDREN'S HOSPITAL, and STANFORD HOSPITAL & CLINICS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ART GONZALES, et al.,) Case No. 5:09-CV-05539-JF

Case No. 5:09-CV-05539-JF

Plaintiffs.

Judge: Hon. Jeremy Fogel

Courtroom: #3 (5th Floor)

VS.

**STIPULATION AND ORDER RE
DISMISSAL OF CAUSES OF ACTION
AGAINST LUCILLE PACKARD
CHILDREN'S HOSPITAL AND
STANFORD HOSPITAL & CLINICS;
DELINEATION OF PLAINTIFFS'
CAUSES OF ACTION APPLICABLE
TO EACH DEFENDANTS;
EXTENSION OF TIME TO RESPOND
TO COMPLAINT**

Plaintiffs, ART GONZALES and MARY GONZALES, individually and as Successors-in-Interest of the ESTATE OF MARTINA GONZALES, by and through their undersigned counsel, do herewith submit this Stipulation re Dismissal of Causes of Action as to Defendants, LUCILLE PACKARD CHILDREN'S HOSPITAL and STANFORD HOSPITAL & CLINICS only and Stipulation delineating the applicable Defendants being called to Answer each of Plaintiffs' Causes of Action.

111

WHEREAS, Defendants, LUCILLE PACKARD CHILDREN'S HOSPITAL and STANFORD HOSPITAL & CLINICS, filed a Motion to Dismiss Plaintiffs' Causes of Action as to the moving Defendants (FRCP 12(b)(6)), a Motion to Strike either the 8th or 10th Causes of Action (FRCP 12(f)), and a Motion for a More Definitive Statement as to the entire Complaint (FRCP 12(e)); and whereas Plaintiffs do not oppose such motions and have filed a Statement of Non-Opposition, NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

1. The First, Second, and Third Causes of Action of Plaintiffs' Complaint are hereby DISMISSED as to Defendants, LUCILLE PACKARD CHILDREN'S HOSPITAL and STANFORD HOSPITAL & CLINICS.

2. The Tenth Cause of Action is duplicative and is hereby DISMISSED.

3. The following is a more definitive statement as to which Defendants are being called to Answer Plaintiffs' various Causes of Action:

- a. First Cause of Action – Strict Liability – as to Defendants Baxter Healthcare Corp., Baxter International, Inc., Scientific Protein Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does 1-50 only.

b. Second Cause of Action – Breach of Implied Warranty – as to Defendants Baxter Healthcare Corp., Baxter International, Inc., Scientific Protein Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does 1-50 only.

c. Third Cause of Action – Breach of Express Warranty - as to Defendants
Baxter Healthcare Corp., Baxter International, Inc., Scientific Protein
Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical

1 Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare
2 Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does
3 1-50 only.

4 d. Fourth Cause of Action – Negligence – as to Defendants Baxter
5 Healthcare Corp., Baxter International, Inc., Scientific Protein
6 Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical
7 Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare
8 Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does
9 1-50 only.

10 e. Fifth Cause of Action – Fraudulent Misrepresentation – as to Defendants
11 Baxter Healthcare Corp., Baxter International, Inc., Scientific Protein
12 Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical
13 Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare
14 Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does
15 1-50 only.

16 f. Sixth Cause of Action – Fraudulent Concealment – as to Defendants
17 Baxter Healthcare Corp., Baxter International, Inc., Scientific Protein
18 Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical
19 Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare
20 Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does
21 1-50 only.

22 g. Seventh Cause of Action – Negligent Infliction of Emotional Distress – as
23 to Defendants Baxter Healthcare Corp., Baxter International, Inc.,
24 Scientific Protein Laboratories, Inc., Chanzhou SPL Company, Ltd. aka
25 Kaipu Biochemical Co., American Capital Ltd., B. Braun Medical Inc.,
26 Tyco Healthcare Group, LP n/k/a Covidien, Covidien, Inc., and Medefil,
27 Inc. and Does 1-50 only.

- h. Eighth Cause of Action – Medical Negligence – as stated in the complaint as to Defendants Lucille Packard Children’s Hospital, Stanford University / Stanford University Hospital and Clinics and Does 1-50 only.
- i. Ninth Cause of Action – Negligent Infliction of Emotional Distress as stated in the complaint as to Defendants Lucille Packard Children’s Hospital, Stanford University / Stanford University Hospital and Clinics and Does 1-50 only.
- j. Tenth Cause of Action – duplicative of Fourth Cause of action as to non-moving Defendants and as to the Eighth Cause of Action as to the moving Defendants.

4. Plaintiffs and Defendants, LUCILLE PACKARD CHILDREN'S HOSPITAL and STANFORD HOSPITAL & CLINICS jointly agree to stipulate to continue LUCILLE PACKARD CHILDREN'S HOSPITAL and STANFORD HOSPITAL & CLINICS' time to file a responsive pleading in response to Plaintiffs' Complaint for Damages to February 4, 2010.

IT IS SO STIPULATED.

Dated: January 15, 2010

DUMMIT, BUCHHOLZ & TRAPP

By: /s/ Carolyn Katzorke
Carolyn Katzorke
Attorneys for Defendants Lucille Packard
Children's Hospital and Stanford Hospital &
Clinics

Dated: January 15, 2010

ROBINSON, CALCAGNIE & ROBINSON

By: /s/ Karren Schaeffer
Karren Schaeffer
Attorneys for Plaintiffs

111

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: January 19, 2010

By:

The Honorable Jeremy Fogel

DECLARATION OF SERVICE

Gonzales v. Lucille Salter Packard Children's Hospital, et al.

Merced Case No. 610641

I am employed in Sacramento County; I am over the age of eighteen years and not a party to the within action; my business address is 1661 Garden Highway, Suite 100, Sacramento, California 95833-9706.

On this date, I served the foregoing documents described as ***STIPULATION AND ORDER RE DISMISSAL OF CAUSES OF ACTION AGAINST LUCILLE PACKARD CHILDREN'S HOSPITAL AND STANFORD HOSPITAL & CLINICS; DELINEATION OF PLAINTIFFS' CAUSES OF ACTION APPLICABLE TO EACH DEFENDANTS; EXTENSION OF TIME TO RESPOND TO COMPLAINT*** on the interested parties in this action as follows:

For Plaintiffs:

Karen Schaeffer, Esq.
Mark P. Robinson, Jr., Esq.
ROBINSON, CALCAGNIE & ROBINSON
620 Newport Center Drive, Ste. 700
Newport Beach, California 92660
Ph: (949) 720-1288
Fax: (949) 720-1292
Email: kschaeffer@rcrlaw.net

Representing Baxter Healthcare Corporation, Baxter International, Inc., Scientific Protein Laboratories, LLC., Changzhou SPL Co., Ltd., and American Capital, Ltd.:

Tammy A. Tsoumas, Esq.
KIRKLAND & ELLIS, LLP.
333 S. Hope Street
Los Angeles, CA 90017
Ph: (213) 680-8233
Fax: (213) 808-8189
Email: tammy.tsoumas@kirkland.com

Representing B. Braun Medical, Inc.

Matthew Rohrbacher, Esq.
ROHRBACHERS CRON MANAHAN
TRIMBLE & ZIMMERMAN CO., LPA
405 Madison Avenue, 8th Floor
Toledo, OH 43604-1243
Ph: (419) 248-2600
Fax: (419) 248-2614
Email: mrohrbacher@rcmtz.com

Representing Covidien and Covidien, Inc.:

Colin Theis, Esq.
SHOOK, HARDY & BACON, LLP
2555 Grand Boulevard
Kansas City, MO 64108
Ph: (816) 559-2124
Fax: (816) 421-5547
Email: ctheis@shb.com

James W. Peel, Esq.
PEEL, GARCIA & STAMPER, LLP
3585 Beechwood, Ste. 101
Fresno, CA 93711
Ph: (559) 431-1300
Fax: (559) 431-1442
Email: jpeel@pgsllp.com

R. Scott LaSalle, Esq.
SHOOK, HARDY & BACON
5 Park Plaza
Irvine, CA 92614
Ph: (949) 475-1500
Fax: (949) 475-0016
Email: rlasalle@shb.com

Representing Medefil, Inc.

Barry R. Murner, Esq.
SEELEY, SAVIDGE, EBERT & GOURASH
26600 Detroit Road
Cleveland, OH 44145-2397
Ph: (216) 566-8200
Fax: (216) 566-0213
Email: bmurner@sseg-law.com

and

Laurie Sherwood, Esq.
WALSWORTH, FRANKLIN, BEVINS &
McCALL, LLP
601 Montgomery Street, 9th Floor
San Francisco, CA 94111-2612
Ph: (415) 781-7072
Fax: (415) 391-6258
Email: lsherwood@wfbm.com

Via United States Postal Service. By depositing for collection and mailing, following ordinary business practices, a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid. I am familiar with the business practices of the law offices of Dummit, Buchholz & Trapp for collecting and processing mail, and know that the mail in said office is collected and processed so that this piece of mail was deposited with the United States Postal Service on the same date as is indicated herein below.

— Via Overnight Mail Service. By causing a true copy thereof, enclosed in a sealed envelope, to be delivered via the following overnight mail courier service: United Parcel Service (“UPS”). The above envelopes were placed for collection and delivery by UPS with fees thereon fully prepaid or provided for in accordance with ordinary business practices.

— Via Facsimile. By sending a true copy thereof by facsimile machine to the numbers listed herein below, and then depositing for collection and mailing, following ordinary business practices, a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid.

Executed on January 15, 2010, at Sacramento, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Angelina M. Lopez

Angelina M. Lopez